therefore allow the appeal and order a new trial before another magistrate.

*Appeal allowed. New trial ordered.*

Solicitors: *Wilson & Co.*

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## LAM SOON CANNERY CO. v. HOOPER & CO.

**[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah and Ong Hock Thye F.JJ.) December 21, 1965]**

**[Singapore — Federal Court Civil Appeal No. 110 of 1964]**

*Reciprocal Enforcement of Judgments Ordinance, (Cap. 18) s. 3(1) — Registration of judgment obtained in United Kingdom — Discretion of the Court — Reciprocal Enforcement of Judgment — Rules, 1938, r. 9(1) — Rules referring only to s. 3(1) of the Ordinance — Rule ultra vires the Ordinance — Circumstances of the case to be considered before exercising discretion to register judgment.*

*Practice and Procedure — Foreign judgment — Registration of — Discretion of judge.*

This was an appeal against the decision of the High Court in Singapore ([1965] 1 M.L.J. 135) dismissing an application by the appellants to set aside an order of the court in Singapore that a judgment received by the respondents against the appellants in the High Court in England be registered in the Singapore court under the provisions of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance. The learned judge of the High Court in Singapore held that all he had to decide was whether it was just and convenient that the judgment should be registered in Singapore having regard to the grounds advanced for setting it aside. He evidently felt himself bound by rule 9(1) of the Reciprocal Enforcement of Judgments Rules, 1938 to limit his inquiry strictly to the grounds set out in section 3(2) of the Ordinance.

**Held:** (1) rule 9(1) is *ultra-vires* the Ordinance in so far as it had the effect of denying to the judge the discretion vested in him by section 3(1) of the Ordinance;

(2) the learned judge was wrong in that he felt himself precluded by rule 9(1) from exercising his discretion on the grounds of justice and convenience;

(3) in the circumstances of this case (where the appellants had been held to be in breach of contract in that they submitted false bills of lading indicating that goods had been shipped in May 1951 when in fact the goods were shipped in June, 1951) and in view of the fact that in arranging for the bills of lading in this case to be antedated the appellants had acted on the request of the respondents, the registration of the judgment should be set aside.

FEDERAL COURT.

*J. Grimberg* for the appellants.

*C. L. Duff* for the respondents.

*Cur. Adv. Vult.*

**Ong Hock Thye F.J.:** This appeal raises questions of some complexity and difficulty. It is an appeal against a decision of the High Court in Singapore, given on November 9, 1964, dismissing an application by the appellants to set aside an order of the court in Singapore, made on March, 31, 1964, that a judgment recovered by the respondents against the appellants in the Queen's Bench Division of the High Court of Justice in England be registered in the Singapore court under the provisions of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance (Cap. 18). The sum involved is £39,862.10.5, equivalent to $340,538.56, and costs. The judgment registered had been obtained in England in proceedings making an arbitration award an order of the Queen's Bench.

The facts, or so much thereof as the learned judge considered to be material for the purposes of the application before him, were succinctly stated by him as follows:

> "For the purposes of this application, it is, I think, unnecessary for me to embark upon a detailed analysis of the facts involved in the arbitration proceedings except to observe that there were three contracts for the sale of a quantity of copra belonging to the applicants by Hooper & Co. The applicants were clearly in breach of contract in that they submitted false bills of lading indicating shipment in May, 1951 when in fact the goods were shipped in June, 1951. Hooper & Co. had sold the copra to a firm 'N' which in turn sold it to a firm 'B' which in turn sold the whole or part of it to a firm 'A'. (I think that for the purposes of this judgment it is unnecessary to set out their full names). As a natural consequence of the discovery of the false documents there were proceedings which 'boomeranged' from 'A' to 'B', from 'B' to 'N' and then from 'N' to Hooper & Co. On their view of the contract, Hooper & Co. considered that they were entitled to be recompensed by the applicants for such losses as they had been required to bear."

As will appear later in this judgment, the question whether, "in all the circumstances of the case" the Singapore court "thinks it is just and convenient" that the English judgment should be enforced here, will have to be exhaustively canvassed. A more detailed statement of the material facts in the history and background of this case would, therefore, be necessary unless the merits of the application of these appellants are to be restricted purely to questions of law, as Winslow J. appears to have limited himself in dealing with the application. I shall accordingly recite the relevant facts, adding those which had been passed over.

In the affidavit dated April 20, 1964 of Mr. Whang Tar Choung, a partner of Lam Soon Cannery Company, he had recounted the events that took place. I shall confine myself to the statements of fact which are not open to dispute. Early in 1951 the appellants had entered into three contracts, Nos. 51/1201, 51/1202 and 51/1219, for the sale of 500, 500 and 300 tons of copra for the gross price of £148,100, in each case less 2%. The appellants had in hand at all relevant times the goods to be shipped against these contracts. They duly made arrangements to ship them on the vessel VERCORS sailing from Singapore in March, 1951. In those days shipping space was notoriously difficult to procure on account of the Korean war and that for Naples, in any event, was extremely limited.

The VERCORS had the misfortune to hit a sunken wreck. It became unable to load the cargoes accepted for March, but accepted the same cargoes for a May sailing. The appellants so advised the respondents. On April 11, 1951 the respondents replied, advising the appellants that the buyers agreed to extend the shipment date to April/May. In the meantime, the appellants had also entered into a contract to sell 500 tons direct to S. A. Annunziata of Naples (referred to as "A" in the judgment of Winslow J.) and, by a letter dated March, 28, 1951, they were advised by the respondents that the buyer under the contracts arranged for by them was also Annunziata.

It subsequently turned out that the VERCORS could not be repaired in Singapore as intended. Shippers were so advised on or about May 7 or 8, 1951 and on the same day the appellants by cable apprised the respondent of the fact. They replied on May 10, 1951. I quote their reply in full (the italics being mine):

"10th May, 1951.

Lam Soon Cannery Ltd.,
519, Balestier Road,
*SINGAPORE.*
Dear Sirs,

*S.S. 'VERCORS'*

We note from your cable to us of the 8th instant that the s.s. 'VERCORS' has now only allotted you 400 tons space owing to the fact that the necessary repairs to this vessel have been found impossible to complete in Singapore. We further note that the balance of your outstanding contracts are being lifted per s.s. 'BREST' due in Singapore on the 24th instant.

As far as the Naples contracts are concerned this will be quite in order but *it is imperative that both the 'VERCORS' and the 'BREST' must give you May bills of lading, otherwise we anticipate some very serious consequences. Mr. Whang assures us however, that May bills of lading can be satisfactorily arranged at your end, and we leave you to comply accordingly.* We suggest to you that pending the result of the arbitration on contract 1207, the 200 tons which you have available for Dunkirk should be shipped by the later vessel and that if the s.s. 'VERCORS' leaves first the 400 tons of cargo allotted by that vessel should be destined to Naples against the first contract outstanding, i.e. 1201. It is of very great importance that the 200 tons to Dunkirk should not be shipped to that port until the arbitration on the 'SARANGAN' has been decided and we are doing our utmost to expedite the matter accordingly. *It is to be regretted that the 'SARANGAN' could not give an April bill of lading, as we have reason to think that we may have been able to smooth the matter over with the buyers on an April shipment, which however has not been possible on a May bill of lading.* We will keep you closely posted with developments and in the meantime, we remain, dear sirs,

Yours very truly,
H. W. HOOPER & CO.
(Illegible)
London Manager."

Besides the BREST the appellants had also booked space on the POLYDORUS. Both were scheduled to load cargo for Naples in May.

The BREST, however, arrived later than scheduled. It began loading on May 29, 1951 and completed on June 4. This vessel carried 300 tons against contract 51/1219 and 500 tons against contract 51/1201.

The POLYDORUS arrived in Singapore on May 29, but was unable to commence loading until June 5, completing on June 8. The copra shipped was the 500 tons sold under contract 51/1202.

The copra sold direct to Annunziata was also loaded on the BREST, partly in May and partly in June. It is to be observed that no litigation arose over this lot so that it may be assumed that the shipping documents must have been entirely in order.

In compliance with the respondent's request made in their letter of May 10, 1951 the appellants obtained bills of lading carrying May dates from the shipping companies concerned, and, on completion of loading, they promptly advised the respondents by cable and letter on June 7, stating that the instructions had been carried out. I quote the letter (the italics, again, are my own):

"*Re our cable of today,* we would inform you that the bills of lading relative to contracts 1201 & 1219 *were dated 29th May* and that of 1202 *dated 30th May.* And we are forwarding the 1265 certificate of origin in a couple of days."

Upon entering into the three contracts abovementioned, the respondents in turn had entered into contracts with Neters for the sale of the same copra. Neters in turn sold what they bought from the respondents to Bunge and Bunge resold the same to Annunziata.

All the copra, including what was sold direct to Annunziata, duly arrived at Naples early in July 1951, was accepted by Annunziata and used. At this time there was a drop in the market price. Annunziata decided to institute inquiries which led to the discovery that the dates of shipment did not tally with those declared in the relative bills of lading. In 1952 they commenced action in the Naples court, claiming the difference between the purchase price and the current market price. The defendants were the shipping agents in the first place; subsequently Bunge was joined as a co-defendant in 1953, and finally in 1955 Lam Soon Cannery *Limited,* though it should have been the firm. Judgment was given against Bunge in 1957.

The contracts of sale and resale in all cases were in the standard form used by the London Copra Association (of which all parties concerned were members) and subject to the Rules of the Association endorsed on the reverse thereof. The form contained *inter alia* provisions for arbitration of disputes. Bunge, however, took no steps to set arbitration in motion while action was pending in the Italian court.

Then, in February 1957, it was realised that the claims of the respective buyers were in danger of being barred by limitation.

Accordingly Bunge gave notice to Neters, who in turn passed on the notice to Hoopers, these respondents. Thereupon, taking the view that it was desirable for the string of sellers to appoint the same arbitrator to save costs, they wrote on February 26, 1957 to the appellants enquiring whether they would agree to nominate the same arbitrator and be bound by the award between Neter and the respondents. The appellants disagreed. Then Bunge and Neters, as between themselves, agreed to appoint as sole arbitrator a Mr. Turpin and, on being so informed, the respondents wrote to the appellants on April 24, 1957 nominating Mr. Turpin also and calling on the appellants either to appoint their own arbitrator or to join with the respondents in appointing Mr. Turpin. The appellants made no reply and on May 15, 1957 the respondents served notice on the appellants of the appointment of Mr. Turpin. After further correspondence, involving some delay, the appellants finally consented, on August 17, 1957, to the appointment of Mr. Turpin, but with a denial of liability in any event.

Subsequently, for reasons superfluous to recount, it was found undesirable to have Mr. Turpin. A Mr. Ellis was appointed in his place as sellers' arbitrator, with a Mr. Owen on the buyers' side. They, being unable to agree, referred the dispute to a Mr. Fischel, as umpire, whose awards dated November 20, 1959 were as follows:

> "I find from evidence produced that documents tendered by sellers were incorrectly dated and therefore award that sellers shall make an allowance to buyers of 1½ (one and one-half per cent) of the contract price."

From the above it is clear what were the issues raised and decided in the arbitration proceedings. In due course Hoopers appealed to the Board of Appeal constituted under the Rules of the London Copra Association. It is again clear that they only did so in consequence of Bunge and Neter having appealed on the ground of insufficiency of the award. On May 28, 1962 the award was raised approximately eighteenfold to £39,862.10.5. Calculation shows that, under the umpire's award, the indemnity which ultimately might have fallen to the lot of the appellant to pay would have amounted only to about £2,200.

Mr. Whang Tar Choung, in his affidavit of April 18, 1964, contended (a) that if the appellants were in default, which he denied, it was a default on June 1, 1951; (b) that at the material time it was a recognised custom of the port of Singapore to date bills of lading in the manner it was done in the instant case if so requested by the shipper; (c) that the judgment of the Queen's Bench Division was obtained in proceedings to make an arbitration award a rule or order of court, but in those proceedings these appellants had not entered appearance and consequently had not submitted to the jurisdiction of the English court.

The issues raised in the court below, briefly, were (i) that the arbitration proceedings were commenced after expiry of the six-year limitation period; (ii) that there was undue delay; (iii) that the appointment of arbitrators was bad as having been made by H. W. Hooper & Co. *Ltd.*, or was good only in respect of claims of H. W. Hooper & Co. *Ltd.;* (iv) that the Appeal Board could not and should not have substituted H. W. Hooper & Co. as a party in place of H. W. Hooper & Co. *Ltd.;* (v) that there could and should have been no arbitration proceedings between agent and principal; (vi) that the damages were awarded on wrong premises, both in fact and in law; (vii) that Annunziata suffered no damage, and (viii) that it was neither just nor convenient to register the judgment of the English High Court in Singapore.

All except the last of the issues above set out were considered by the learned judge, who, with respect, arrived at the right conclusion in my view. Having said so, I do not consider it necessary to repeat those points herein. It remains only for me to deal with the question whether or not it was just and convenient for the English judgment to be enforced in Singapore.

Before I do so, however, I have an observation to make on an affidavit in reply filed by the respondents; it was sworn by Mr. Derek Hayes, a partner of Macfarlanes, London solicitors of Hoopers, on June 26, 1965. He explained that Hoopers themselves had felt compelled to appeal to the board because Bunge was appealing. He referred to the special case stated by the board for the opinion of the court in which appears the following contention by Hoopers —

> "The allowance of 1½ per cent of the contract price awarded by the umpire is a reasonable estimate of the damages on the footing that the sellers are not cross-appealing and are, therefore, content to uphold the award."

This contention is, in my view, of interest because it had been the respondents' case throughout their correspondence with the appellants that they would be entitled in any event to pass on to the appellants whatever liability they themselves incurred towards their own buyers. Yet, notwithstanding that they would not be out of pocket in any event, they had expressed themselves as content with Mr. Fischel's award. Taking all the circumstances of the case into consideration I think some significance may be attached to their expressed views. Is it not

reasonable to hold such show of interest as indicating that they were not unmindful of their own responsibility in causing the bills of lading to be antedated? True, they held an award by way of indemnity against the appellants. Still, it does not necessarily follow that, had the award not been enhanced, they would not have treated it as a trading loss and refrained from claiming an indemnity from a party who had merely followed their instructions. Since the Appeal Board's award became no longer negligible in amount, it is not surprising that the respondents took steps to convert the award into a judgment of the English court with a view to enforcing the same in Singapore. They succeeded in doing so.

I turn now to the issue of justice and convenience which the learned judge thought was outside the scope of what fell to be considered by him on an application to set aside a registered judgment.

The relevant provisions of law are in section 3 of the Reciprocal Enforcement of Judgments Ordinance (Cap. 18). I quote only the relevant portions below:

"3. (1) Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the High Court may, *if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced* in the Colony, *and subject to the provisions of this section*, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if —

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(d) the judgment was obtained by fraud; or

(e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

. . . . . .

(4) The judges of the Supreme Court or any three of them of whom the Chief Justice shall be one shall provide by rules —

. . . . . .

(b) for enabling the High Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit;

. . . . . .

Under the Rules in force (*Gazette* Notification No. 122 of 1938) an application for registration of a United Kingdom judgment is made *ex parte* supported by an affidavit of facts (rules 1 & 2). Rule 7 provides for notice of registration to be served on the judgment debtor. Then we come to rule 9(1) which is as follows:

"9. (1) The judgment debtor may at any time within the time limited by the Order giving leave to register after service on him of the notice of the registration of the judgment apply by summons to a judge to set aside the registration or to suspend execution on the judgment and the judge on such application if satisfied that the case comes within one of the cases in which under section 3(2) of the Ordinance no judgment can be ordered to be registered may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct: Provided that the judge may allow the application to be made at any time after the expiration of the time herein mentioned."

This rule supersedes the former rule 12 which contained certain words deleted from the present rule 9(1). Rule 12 was as follows:

"12. The judgment debtor may at any time within the time limited by the Order giving leave to register after service on him of the notice of the registration of the judgment apply by summons to a judge to set aside the registration or to suspend execution on the judgment and the judge on such application if satisfied that the case comes within one of the cases in which under section 3(2) of the Ordinance no judgment can be ordered to be registered or that it is not just or convenient that the judgment should be enforced in the Colony or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct: Provided that the judge may allow the application to be made at any time after the expiration of the time herein mentioned."

I have underlined the words which have been either deleted or omitted through an oversight on the part of the rule-making body. Rule 12, in fact, is identical with Rules of the Supreme Court Order 41A, rule 12, which is in force in England.

At the hearing of the application to set aside the registration of the judgment, Mr. Lloyd, who was counsel for the present appellants, referred specifically to the respondents' letter of May 10, 1951 and their insistence on May bills of lading. The question of the respondents' responsibility for the antedating of the bills of exchange was, however, left out of consideration by the learned judge in coming to his decision. He took the view that, under rule 9(1), only subsection (2) of section 3 was relevant. Hence in his judgment he said:

"Mr. Lloyd urges me, on this application to set aside the registration of the judgment, to hold that it would

not now be just and convenient to enforce it here. It is clear that registration can be set aside on one of the grounds appearing in section 3(2). Once such a ground is shown it follows that the registration must be set aside.

I therefore propose to deal with this application on the basis that an attack on registration is confined to grounds (a) (b) and (c) of section 3(2) . . ."

Later, he went on to say:

"In considering whether the English arbitral award should be registered in Singapore, I have to ask myself two questions —

1. Was the judgment debtor a party to a valid agreement to arbitrate in England?
2. Did the arbitration tribunal act within the terms of that agreement?"

Answering both these questions in the affirmative he came to the conclusion thus:

"The High Court or a judge thereof in England does not merely act as a rubber stamp when giving leave to enforce an award on an arbitration agreement under section 26 of the Arbitration Act, 1950, and I am satisfied that most of the matters which have been reopened before me must also have already been considered. No appeal has been taken to the English Court of Appeal on the rejection of the appeal made to Mr. Justice Megaw. So far as I am concerned the matter must be regarded as concluded between the parties. I cannot be expected in Singapore to sit as an English Court of Appeal to decide whether Mr. Justice Megaw was right. All I have to decide is whether it is just and convenient that the judgment should be registered here having regard to the grounds advanced for setting it aside. I can think of no reason why it is not."

From what I have quoted above it is abundantly clear that the learned judge felt himself bound by Rule 9(1) to limit his inquiry strictly to grounds (a) (b) & (c) of section 3(2). The rule, in contrast to the former rule 12, precludes him from considering whether it was "just and convenient" that the English judgment should be enforced.

Section 3(1) provides for registration if, in all the circumstances of the case, the court in Singapore thinks it just and convenient that the English judgment should be enforced. Subsection (2) lays down, on the other hand, that judgments which fall foul of paragraphs (a) to (f) are non-registrable. Read together these two sub-sections present, as it were, the two sides of a coin; in that sense they are complementary, with a positive aspect and a negative one.

Rule 9(1), as it stands, plainly takes no account of the one side of the coin, while looking only at the other, with the result that the rule has rendered the provisions of section 3(1) nugatory. Registration being *ex parte*, and consequently a matter of course, it was at that stage manifestly premature to anticipate and consider whether or not the judgment debtor might be able to show grounds against enforcement of the judgment.

As Winslow J. puts it: "In my opinion, on an *ex parte* application, supported by an affidavit, which *ex facie* satisfies the requirements of the Ordinance and the rules, the judge who has no other material before him, will be hard put to it to decide that it would not be just and convenient to enforce the judgment in the State, in the absence of grounds which are also apparent from the record before him."

Logically the time for the judgment debtor to show cause why enforcement would not be just or convenient is when he applies for the registration to be set aside. That is the practice in England and it was the practice in Singapore until the former rule 12 ceased to be in force. Can a rule be valid which is in conflict with the law contained in the statute under which the rule itself came to be made? The law on this point is clear. Section 23(c) of the Interpretation and General Clauses Ordinance (Cap. 2) provides that "no subsidiary legislation made under an Ordinance shall be inconsistent with the provisions of any Ordinance." In my view rule 9(1) so offends. The rule cannot have the effect of denying to the judge the discretion vested in him by subsection (1) of section 3. To that extent I hold that rule 9(1) is *ultra vires* and should be read in the sense one understands the former rule 12 to mean.

It follows, therefore, that the judgment of the learned judge was wrong in that he had felt himself precluded by rule 9(1) from exercising his discretion as he should. He ought to have considered "all the circumstances of the case", of which the all-important and indisputable fact is that, in arranging for the bills of lading to be antedated, the appellants did so at the respondents' behest.

The respondents by their letter of May 10, 1951, conveyed what they had in mind in unmistakable terms. "It is imperative that both the VERCORS and the BREST must give you May bills of lading", they wrote. Why not simply state that the goods must be loaded in May? In the next sentence they wrote: "Mr. Whang assures us, however, that May bills of lading can be satisfactorily arranged at your end, and we leave you to comply accordingly". The respondents were well aware of the shortage of cargo space and of the possible shipping delays. For goods loaded in May, bills of lading are dated in May as a matter of course, without any necessity for special arrangements. What else could the respondents have meant by their instructions, except that Mr. Whang was to obtain May bills, regardless of the loading date? The subsequent reference to the SARANGAN's shipment in May, on an April bill of lading, indeed, goes on further to show — in my view, again unmistakably — that, after the Sarangan shipment, the respondents were anxious to avoid a recurrence of the difficulties they experienced

in the Sarangan case. On this ground alone, for my own part, I would hold that the respondents do not deserve to be indemnified by the appellants for carrying out their instructions. It lies ill in the mouth of the respondents to take advantage of their own wrongdoing at the expense of the innocent party.

I would accordingly allow the appeal with costs here and in the court below, and order that the registration of the judgment be set aside.

**Wee Chong Jin C.J. (Singapore)** and **Tan Ah Tah F.J.** concurred.

*Appeal allowed.*

Solicitors: *Drew & Napier; Donaldson & Burkinshaw.*

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## MARIMUTHU v. THIRUCHITAMBALAM

**[A.C.J. (Gill J.) December 20, 1965]**

**[K.L. — Civil Appeal No. 21 of 1965]**

*Husband and Wife — Maintenance — Application for — Whether proceedings are civil or criminal — Hindu marriage — Husband bringing another woman into house and treating wife with cruelty — Offer of husband to maintain wife on condition of her living with him — Whether refusal of wife justified — Married Women and Children's (Maintenance) Ordinance, 1950, ss. 3 & 5.*

This was an application for maintenance. The parties were Hindus. About three years after the marriage the husband (respondent) brought another woman into the house and soon after started ill-treating the wife by scolding her, beating and assaulting her. The husband then took the wife and children to her mother's home where they stayed. During this period the husband married the other woman who had been brought into the home. Sometime later the wife returned to stay with the husband but differences arose between them. The wife could not tolerate the presence of the other wife and after a year she again returned to her mother's house. The husband orally agreed to pay $100 for the maintenance of herself and the children and he paid this regularly for six years. After that however the husband asked the wife to stay with him and the other wife. The wife refused and the husband then discontinued payment of the monthly allowance for two years, after which the wife instituted proceedings to claim maintenance. The learned magistrate dismissed the application at the close of the wife's evidence on a submission of no case to answer as he held that a Hindu wife was not entitled to refuse to live with her husband merely because he had taken another wife. The wife appealed.

**Held:** (1) maintenance proceedings are civil in nature and the learned magistrate in this case should have asked the counsel for the defendant-husband to elect whether or not he would call any evidence before he could submit there was no case to answer;

(2) a wife is entitled to live with that amount of decency and dignity which prevails in her class and if the treatment of the husband towards her does not permit her to lead such a life, his conduct amounts to neglect and refusal to maintain within the meaning of section 3 of the Married Women and Children (Maintenance) Ordinance;

(3) in the circumstances of this case, where there was uncontradicted evidence of the ill-treatment of the wife by the husband, the wife had sufficient cause for living apart from the husband and therefore an order for maintenance should be made against him.

*Cases referred to:—*

(1) *Amand* v. *Home Secretary and Minister of Defence of Royal Netherlands Government* [1943] A.C. 147.

(2) *Chew Cheng Swee* v. *Chan Chye Neo* [1932] M.L.J. 5.

(3) *Kok Heng Chow* v. *Lay Mee Yin* [1948] M.L.J. 157, 158.

(4) *Stewart* v. *Stewart* [1952] M.L.J. 211.

(5) *Ponnambalam* v. *Saraswathi* A.I.R. 1957 Mad. 693 at p. 694.

CIVIL APPEAL.

*K. L. Devaser* for the appellant.

*S. D. K. Peddie* for the respondent.

*Cur. Adv. Vult.*

**Gill J.:** This is an appeal from a decision of the magistrate's court, Kuala Lumpur dismissing the appellant's application for an order requiring the respondent as her husband to pay a monthly allowance for the maintenance of herself and her two children.

The facts of the case as found by the learned magistrate are as follows.

The parties were married according to Hindu rites at the Mariaman Temple in Kuala Lumpur on 3rd November, 1949 and there are two daughters of the marriage aged 15 and 14 respectively. The respondent had married previously but his wife had died leaving four children.

About three years after marrying the appellant, the respondent brought another woman into the house to help in the household work and to look after one of the children. Soon after this he started ill-treating the appellant by scolding, beating and assaulting her after taking alcoholic drinks. At times these assaults took place in the presence of the newly acquired domestic servant. Apart from assaulting her, he would sometimes accuse her of putting some medicine into his drinks whenever he felt giddy after taking alcoholic drinks, and refuse to talk to her. Because of these occurrences the appellant went without food for days. The respondent then took the appellant from Alor Gajah, where they were staying, to her mother's house in Kuala Lumpur.

The appellant lived with her mother in Kuala Lumpur for about two years and her two children stayed with her. During this period the respondent married the woman who had gained entrance into the house as a domestic servant. The appellant was not informed of this intended marriage, but apparently she came to